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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/620,028	07/14/2003	Leif Tiahrt	03TIA1	7503
7590	06/14/2006		EXAMINER	
Michael G. Petit P. O. Box 91929 Santa Barbara, CA 93190-1929			LEWIN, ALLANA	
			ART UNIT	PAPER NUMBER
			3764	

DATE MAILED: 06/14/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/620,028	TIAHRT, LEIF
<b>Examiner</b>	<b>Art Unit</b>	
Allana Lewin	3764	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

1)  Responsive to communication(s) filed on 27 March 2006.

2a)  This action is **FINAL**.                    2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## **Disposition of Claims**

4)  Claim(s) 1-3,5 and 8-11 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5)  Claim(s) \_\_\_\_\_ is/are allowed.

6)  Claim(s) 1-3,5 and 8-11 is/are rejected.

7)  Claim(s) \_\_\_\_\_ is/are objected to.

8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on \_\_\_\_\_ is/are: a)  accepted or b)  objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)  All    b)  Some \* c)  None of:

1.  Certified copies of the priority documents have been received.
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1)  Notice of References Cited (PTO-892)  
2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3)  Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date . . . . .  
4)  Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_ .  
5)  Notice of Informal Patent Application (PTO-152)  
6)  Other: \_\_\_\_ .

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 03/27/2006 has been entered.

### ***Claim Rejections - 35 USC § 102***

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1-3 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Herz (U.S. 684,688).

3. Herz discloses a method for performing a repetitive resistance exercise comprised of repetitions wherein during a single repetition of the resistance exercise, and exerciser exerts an applied force in opposition to an oscillating resistive force (note figure 6) through a distance defining a range of motion wherein the oscillating resistive force oscillates in a direction (laterally) that changes a plurality of times (as pulley a3 rotates cable will inherently move laterally thus leading to a degree of oscillating resistance) during a repetition and wherein the oscillation of the resistive force has a uniform amplitude (based on the groove shape) and frequency during a repetition.

Referring to claim 2, Herz discloses a device for performing a repetitive resistance exercise wherein a single repetition of the resistance exercise consists of an exerciser exerting an applied force in opposition to a resistive force through a distance defining a range of motion, the device comprising a resistive force means (a3, c) operable for providing an oscillatory resistive force that varies in direction a plurality of times during a single repetition. Herz does not specifically state oscillatory forces, but based on the configuration of the pulley, and the structural similarity to the pulley disclosed by the Applicant, it appears that the device would undergo oscillatory resistive force having a uniform frequency throughout the range of motion. Herz further discloses contact means in mechanical connection to the resistive force means, the contact means being operable for receiving a portion of the body of the exerciser and enabling the exerciser to exert an applied force with the body portion in opposition to the oscillatory resistive force through the range of motion. Referring to claim 3, Herz discloses the first resistive force means comprising a weight (e1) connected to the contact means by a cable (b) wherein the cable passes over the lead pulley (a3) rotatably mounted on an axle (a) having an axis of rotation disposed between the first resistive force means and the contact means wherein the lead pulley is operable for moving the cable in a direction that is parallel to the axis of rotation of the lead pulley a plurality of times during a repetition.

4. Claims 8-9 and 11 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Lambert, Jr. (U.S. 4,149,714). Referring to claim 8, Lambert discloses a device for performing a repetitive resistance

exercise wherein a single repetition of the resistance device consists of an exerciser exerting an applied force in opposition to a resistive force through a distance defining a range of motion, the device comprising, a resistive force means (45) operable for providing an oscillatory force as best understood that varies in magnitude a plurality of times during a repetition and wherein the oscillatory resistive force as best understood would have a uniform frequency throughout the motion, and contact means (8) in mechanical connection to the resistive force means, the contact means being operable for receiving a portion of the user's body and enabling the exerciser to exert an applied force with the body portion in opposition to the oscillating resistive force through the range of motion. Although Lambert does not specifically mention oscillatory resistance force, Examiner notes the similarities in structure to Applicant's invention, with specific emphasis on the cable having an end in communication with a weight stack, with the cable wrapped around a cam-shaped pulley (17). As best understood, in as much as Applicant's invention provides an oscillatory force, the rotating cam-shaped pulley would result in a degree of oscillatory force experienced by the user. Referring to claim 9, note the cam-shaped pulley. With regards to claim 11, Lambert teaches a method of performing repetitive resistance exercise comprised of a plurality of repetitions wherein during a single repetition of resistance exercise an exerciser exerts an applied force in opposition to an oscillating resistive force through a distance defining a range of motion wherein the oscillating resistive force has a magnitude that oscillates a plurality of times during a repetition and wherein the oscillation of the magnitude of the resistive force has

a uniform amplitude and frequency as best understood based on the similarities of the structure of the prior art and the Applicant's disclosure.

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 5 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Herz in view of Williams et al. (U.S. 2004/0014568). Herz teaches the claimed invention except for having the lead pulley tilted. Williams teaches in paragraph [0017], the desirability of having an angled pulley in order to vary rope resistance to a user. In view of the teachings of Williams it would have been obvious to one of ordinary skill in the art at the time of invention to have the pulley tilted in order to vary the resistance according to user preference. With respect to claim 8, note that Herz teaches the device being used in conjunction with a cam-shaped pulley.

***Response to Arguments***

7. Applicant's arguments with respect to claim1-3, 5, and 8-11 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Allana Lewin whose telephone number is 571-272-5560. The examiner can normally be reached on Monday - Friday 8:00am - 4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory Huson can be reached on (571) 272-4887. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

AL  
06/12/2006



GREGORY L. HUSON  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3700